IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1573 of 2007

Jani @ Janakiraman .. Petitioner

Vs

1. The Secretary to Government
   Home, Prohibition and Excise Department
   Government of Tamilnadu
   Fort St. George, Chennai-600 009.

2. The Commissioner of Police
   Chennai City Police
   Egmore, Chennai 600008. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.N.Duraiswami for
Ms.M.Udhaya Banu
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, detenu herein, was incarcerated by order dated 3.7.2007 of the second respondent under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda and confined at Central Prison, Chennai. Hence, the petitioner seeks a writ of Habeas Corpus to call for the records in connection with the said order of detention made in Memo No.284/BDFGISSV/2007, dated 3.7.2007, to set aside the same and to direct the respondents to produce him before this Court and set him at liberty.

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2.1. The order of detention dated 3.7.2007 came to be passed based on the ground case said to have taken place on 24.6.2007 at about 16.30 hours, registered on the basis of the complaint lodged by one Dhandapani before the Inspector of Police, C-3 Seven Wells Police Station. On 24.6.2007, while the complainant, who is running a cycle rickshaw, was near the junction of Walltax Road and Amman Koil Street, the detenu is alleged to have wrongfully restrained and threatened him to part with some money at the knife point. When the complainant replied him as if he had no money, suddenly the detenu took out a knife and attempted to cut over the neck of the complainant, which when warded off, fell on his left hand and caused bleeding injury. On hearing hue and cry of the complainant, public came to his rescue, which went in vain and the detenu made his good escape by threatening them at the point of knife and also pelted soda water bottles on the public, which created panic and terror situation in the area. On the complaint lodged, a case in Crime No.389 of 2007 was registered for the offences punishable under Sections 341, 324, 336, 427, 307 and 506(ii) I.P.C. and the Inspector of Police took up investigation, during which, the detenu was arrested and on the orders of the learned Magistrate, remanded to judicial custody.

2.2. On being satisfied that the detenu had acted in a manner prejudicial to the maintenance of public order and after taking into consideration the three adverse cases registered against the detenu, viz., Crime Nos.129, 133 and 225 of 2007 on the file of C3 Seven Wells Police Station for the offences punishable under Sections 379, 341, 323 and 506 (ii) IPC, the impugned detention order was clamped on the detenu.

3. The learned counsel for the petitioner challenges the impugned order of detention on the ground of non application of mind on the part of the detaining authority, as the detaining authority had not taken note of the fact that the specific plea raised by the learned counsel for petitioner in her representation dated 20.10.2007 that the detenu was taken by the police on 23.6.2007 and not on 25.6.2007, as mentioned in the detention order, was not considered in the rejection order dated 5.11.2007.

4. We have perused the entire materials placed before us. Even though in the grounds of detention, it was stated that the detenu was arrested on 25.6.2007 with respect to the ground case, in the representation made by the learned counsel for the petitioner dated 20.10.2007, the learned counsel had specifically stated that the detenu was taken on 23.6.2007 by the Police and was kept under their custody till 25.6.2007 and thereafter, a false case was foisted against him. However, the first respondent, while passing the order of rejection dated 5.11.2007 rejecting the representation of the learned counsel dated 20.10.2007, had not considered the contention raised by the learned counsel as to the arrest of the detenu.

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5. We are, therefore, satisfied that the detaining authority had not taken note of the above fact, which shows the non application of mind on the part of the detaining authority. Accordingly, the order of detention dated 3.7.2007 is vitiated and the same is set aside. The detenu Jani @ Janakiraman is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR

To

1. The Secretary to Government
   Home Prohibition & Excise Department
   Secretariat, Chennai 9.

2. The Commissioner of Police
   Chennai City Police
   Egmore, Chennai-8.

3. The Superintendent
   Central Prison
   chennai.

4. The Joint Secretary to Government,
   Public (Law and Order)
   Fort St.George, Chennai -9.

5. The Public Prosecutor
   High Court, Madras.

1 cc To Mr.M.Udaya Banu, Advocate, SR.73316.

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KAJ(CO)
RVL 04.01.2008

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